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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,984	06/28/2001	Stephen D. Ainsworth	ACS-55940	3805
24201	7590	10/09/2007		
FULWIDER PATTON LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE, TENTH FLOOR LOS ANGELES, CA 90045			EXAMINER GANESAN, SUBA	
			ART UNIT 3774	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/894,984

Applicant(s)

AINSWORTH ET AL.

Examiner

Suba Ganesan

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1,3,7,8 and 10-19 is/are rejected.
- 7) ☒ Claim(s) 2 and 4-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see remarks filed 9/19/2007, with respect to the Burgermeister patent have been fully considered and are persuasive. The finality of the rejection dated 7/27/2007 has been withdrawn.

Allowable Subject Matter

1. Claims 2, and 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. Claim 20 is allowed.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

directly or indirectly from an international application filed before November 29, 2000.

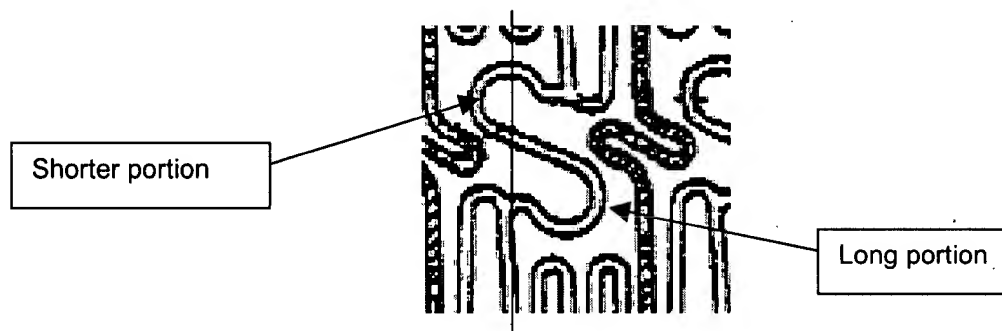
Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3, 7,8,10,13-14,19 are rejected under 35 U.S.C. 102(b) as anticipated by Ogi et al. (U.S. Pat. No. 5,925,061).

3. Ogi discloses a stent comprising a cylindrical body with a plurality of rings defining first and second peaks (see fig. 1). Note that examiner is considering each turn of the helix (fig. 1) to represent a ring, thus the entire helix has a plurality of rings. At least one link 18 connects the second peak of one ring to the second peak of another ring. The link defines an undulating portion (fig. 5A and col. 7 lines 25-35), and at least one peak adjacent each link has a strut defining a shorter longitudinal length than another first peak adjacent the link (see fig. 8 for example, noting that the undulating link depicted in fig. 5A is disclosed as usable with any of the embodiments of the Ogi patent). Note that examiner is treating the limitation "to thereby provide a space for the undulating portion" to be functional language.

4. Each of the plurality of first peaks of adjacent rings can be out of phase (col. 5 lines 29-35). The stent is formed from metal, specifically nickel-titanium (col. 5 lines 45-60). Each link has three circumferentially extending transitions (see fig. 5, noting that the link has 3 inflection points). All of the links can have undulating portions, or alternatively only some of the links can have undulating portions, thus creating links with varied lengths (col. 7 line 26-46).

1. Claims **1, 7-8, 11, 13-14** and **17-19** are rejected under 35 U.S.C. 102(e) as being anticipated by Herklotz et al. (U.S. Pat. No. 6264688).
2. Herklotz discloses a stent comprising a cylindrical body having a plurality of rings including struts with a shorter length **13** and longer length **12**, the shorter length providing a space for an undulating link **10**. The examiner is considering link 10 to have two circumferentially extending transitions. Link **11** connects the second peak of one ring with a second peak of another ring (see fig. 1). The stent can be made of platinum metal (col. 2 lines 40-47). Link 10 comprises transitions extending perpendicular to a longitudinal axis of the stent, the transitions having a long portion directed towards a shorter first peak and a shorter portion directed towards a longer first peak (see annotated figure below) Link **10** and link **11** have varied lengths (fig. 1). The end rings have a different number of first and second peaks (fig. 1).



Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Ogi et al. (U.S. Pat. No. 5,925,061) in view of Drasler et al. (U.S. Pat. No. 6,245,101).

Ogi is explained supra. However, Ogi lacks variable width or thickness struts. Drasler teaches the use of variable width or thickness struts for the purpose of providing a non-crushable stent (see abstract and fig. 2A for example). Therefore it would have been obvious to one of ordinary skill in the art to combine the variable width strut as taught by Drasler with the stent of Ogi for the purpose of improving the stents performance under crushing forces.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogi et al. (U.S. Pat. No. 5,925,061).

7. Ogi is explained supra. Ogi appears to lack a link connecting each second peak to an adjacent second peak. However, It would have been obvious to one of ordinary skill in the art to provide a link for each second peak for the purpose of creating a more rigid stent.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suba Ganesan whose telephone number is 571-272-3243. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SDG 10/1/2007

BRIAN E PELLEGRINO
PRIMARY EXAMINER

